

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MARDELL MAURICE JOHNSON,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS MEDICAL
DEPARTMENT, *et al.*,

Defendants.

Case No. 3:22-cv-00552-MMD-CLB

ORDER

Plaintiff Mardell Maurice Johnson brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at three different Nevada Department of Corrections facilities. (ECF No. 5.) On January 5, 2023, this Court screened Plaintiff's complaint and ordered Plaintiff to update his address by February 5, 2023. (ECF No. 4 at 12.) The Court explained that, under the local rules, Plaintiff was responsible for updating his address with the Court and warned Plaintiff that it would dismiss his case without prejudice if he failed to update his address. (*Id.*) The Court sent a one-time courtesy copy of the order to Plaintiff's current location at Stewart Conservation Camp ("SCC") to ensure that Plaintiff received the order and would update his address. (*Id.* at 13.) However, that deadline expired without any response from Plaintiff.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.

1 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
2 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th
3 Cir. 1987) (affirming dismissal for failure to comply with court order). In determining
4 whether to dismiss an action on one of these grounds, the Court must consider: (1) the
5 public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
6 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition
7 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*
8 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
9 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

10 The first two factors, the public's interest in expeditiously resolving this litigation
11 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
12 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
13 because a presumption of injury arises from the occurrence of unreasonable delay in filing
14 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
15 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
16 cases on their merits—is greatly outweighed by the factors favoring dismissal.

17 The fifth factor requires the Court to consider whether less drastic alternatives can
18 be used to correct the party's failure that brought about the Court's need to consider
19 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
20 that considering less drastic alternatives *before* the party has disobeyed a court order
21 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
22 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
23 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's
24 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled
25 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).
26 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
27 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
28 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed without

1 Plaintiff's willingness to comply with the Court's orders and the ability for the Court and
2 the defendants to send Plaintiff case-related documents, filings, and orders, the only
3 alternative is to enter a second order setting another deadline asking Plaintiff to update
4 his address. But the reality of repeating an ignored order is that it often only delays the
5 inevitable and squanders the Court's finite resources. The circumstances here do not
6 indicate that this case will be an exception: there is no hint that Plaintiff needs additional
7 time or evidence that he did not receive the Court's order at SCC. Setting another
8 deadline is not a meaningful alternative given these circumstances. So the fifth factor
9 favors dismissal.

10 Having thoroughly considered these dismissal factors, the Court finds that they
11 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
12 prejudice based on Plaintiff's failure to file an updated address in compliance with this
13 Court's January 5, 2023, order. The Clerk of Court is directed to enter judgment
14 accordingly and close this case. No other documents may be filed in this now-closed
15 case. If Plaintiff wishes to pursue his claims, he must file a complaint in a new case and
16 provide the Court with his current address.

17 It is further ordered that Plaintiff's application to proceed *in forma pauperis* (ECF
18 No. 1) without having to prepay the full filing fee is granted. Plaintiff will not be required to
19 pay an initial installment fee. Nevertheless, the full filing fee will still be due, pursuant to
20 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act. The movant herein is
21 permitted to maintain this action to conclusion without the necessity of prepayment of fees
22 or costs or the giving of security therefor.

23 It is further ordered that, pursuant to 28 U.S.C. § 1915, as amended by the Prison
24 Litigation Reform Act, the Nevada Department of Corrections will forward payments from
25 the account of **Mardell Maurice Johnson, #1171803** to the Clerk of the United States
26 District Court, District of Nevada, 20% of the preceding month's deposits (in months that
27 the account exceeds \$10.00) until the full \$350 filing fee has been paid for this action.
28 The Clerk of the Court will send a copy of this order to the Finance Division of the Clerk's

1 Office. The Clerk will send a copy of this order to the attention of **Chief of Inmate**
2 **Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson City, NV
3 89702.

4 It is further ordered that, even though this action is dismissed, or is otherwise
5 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. §1915, as amended
6 by the Prison Litigation Reform Act.

7 DATED THIS 13th Day of February 2023.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE